



December 14, 2001

Mr. Paul Hunn
Walsh, Anderson, Brown, Schulze & Aldridge, PC
P.O. Box 168046
Irving, Texas 75016-8046

OR2001-5851

Dear Mr. Hunn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156157.

The Kemp Independent School District (the "district"), which you represent, received a request for seven categories of information.¹ You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that the submitted documents contain information that is subject to section 552.022 of the Government Code, which makes certain information expressly public and therefore not subject to discretionary exceptions to disclosure. Section 552.022 states in relevant part:

Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

. . . .

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body.

¹You inform us that, pursuant to a letter dated October 2, 2001, the requestor withdrew her request for category six, copies of "all communications and documentation pertaining to the Deck visit from TEA or the KJH."

Gov't Code § 552.022(a)(3) (emphasis added). A portion of the information you have submitted to this office appears to be subject to section 552.022(a)(3) and therefore, as prescribed by section 552.022, this information, consisting of a liability insurance policy which we have marked, must be released to the requestor unless it is expressly made confidential under other law, or unless it has not been signed.

You argue that the information subject to section 552.022(a)(3) is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 is a discretionary exception and not "other law" that makes information "expressly confidential" for purposes of section 552.022.² Therefore, you may not withhold the contract at issue under section 552.103.

We next note that you have submitted copies of the minutes of district school board meetings that appear to be responsive to the request for copies of such minutes from April 1999 to September of 2000. Upon review of the submitted minutes, it appears that the minutes pertain to meetings conducted in accordance with the Texas Open Meetings Act. *See* Gov't Code §§ 551.001 - .146. Section 551.022 of the Government Code expressly provides that "[t]he minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee." When a statute expressly makes information public and mandates the release of the information, that information cannot be withheld from disclosure under one of the exceptions in Subchapter C of chapter 552 of the Government Code. Open Records Decision No. 451 (1986) (specific statute that affirmatively requires release of information at issue prevails over litigation exception of Public Information Act). Consequently, the district must release the submitted minutes, along with their attachments, to the requestor. Gov't Code § 551.022; *see* Attorney General Decision JM-1143 (1990) (tape recordings of meeting of governmental body produced as aid in preparing minutes are expressly subject to Public Information Act); Open Record Decision No. 221 (1979) (board minutes of school district cannot be excepted under statutory predecessor to section 552.103 under any imaginable circumstances).

We will next address your argument under section 552.103 for the remaining information. Section 552.103 provides as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or

²Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The district must meet both prongs of this test for information to be excepted under 552.103(a).

You inform us that the district was involved in litigation with the requestor on the date the district received the request for information. In support of this assertion, you have submitted copies of various petitions in the case of *Alicia Smith vs. Kemp Independent School District, et. al.*, cause number 58679, pending in the District Court of Kaufman County, Texas, 86th Judicial District. On this basis, we conclude that the district has met the first prong of the section 552.103 test. Upon review of the remaining information, we conclude that this information, consisting of one document that we have marked with a red flag, is related to the pending litigation, and thus, this document may be withheld under section 552.103.

To summarize, pursuant to section 552.022(a)(3), the district must release the liability insurance policy which we have marked. Pursuant to section 551.022 of the Government Code, the district must release the copies of minutes of the district school board meetings, along with their attachments. The remaining document, which we have marked, may be withheld under section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 156157

Enc. Submitted documents

c: Ms. Alicia K. Smith
P.O. Box 646
Kemp, Texas 75143
(w/o enclosures)